

**Resolution Authorizing the Diamondhead Country Club &  
Property Owner's Association to Adopt the  
Median on Gex Drive North and South of the Interstate**

Whereas, the Mayor and Council of the City of Diamondhead authorized Right-of-Way Adoptions in Ordinance 2012-028 adopted on December 3, 2012; and

Whereas, Ordinance 2012-028 authorized the form of the Right-of-Way Adoption; and

Whereas, the attached Adoption Form complies with Ordinance 2012-028 and the approved form; and

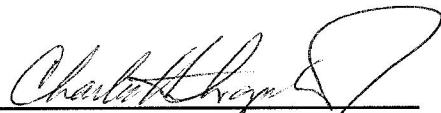
Whereas, the Diamondhead Country Club & Property Owner's Association has indicated a desire to adopt the Right-of-Way described in the attached Adoption Agreement which Agreement the Mayor and Council here by approve; and

Whereas, the Mayor and Council of the City of Diamondhead find that the adoption by the Diamondhead Country Club & Property Owner's Association of the Right-of-Way on Gex Drive is consistent with the reservation of landscape easement contained in the Deed of Dedication of January 7, 2013, that it is in the best interest of the City of Diamondhead that the Diamondhead Country Club & Property Owner's Association adopt the Gex Drive Right-of Way as described in the attached adoption agreement; and, that it is for the public convenience and necessity of the City of Diamondhead that Diamondhead Country Club & Property Owner's Association adopt the ROW.

Now Therefore, BE IT RESOLVED, that the Mayor and Council approve the form of the attached ROW agreement. BE IT FURTHER RESOLVED that the Mayor and Council approve the adoption of the Gex Drive ROW by Diamondhead Country Club & Property Owner's Association; and BE IT FURTHER RESOLVED that the Mayor of the City of Diamondhead be and he is hereby authorized to execute the attached ROW adoption agreement; and, a copy of the executed agreement will be spread upon the Minutes.

Approved by the Mayor and Council of the City of Diamondhead, Hancock County, Mississippi on this the 7th day of January, 2013.

	Aye	Nay	Absent
Councilmember Ackerman	<u>✓</u>	_____	_____
Councilmember Holcomb	<u>✓</u>	_____	_____
Councilmember Knobloch	<u>✓</u>	_____	_____
Councilmember Rech	<u>✓</u>	_____	_____
Councilmember Roberson	<u>✓</u>	_____	_____
Mayor Ingraham	<u>✓</u>	_____	_____



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Charles H. Ingraham, Jr. Mayor



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Sue W. Foster, City Clerk

## **Adopt a Right-of-Way Agreement**

This Agreement is made and entered into by and between The City of Diamondhead, Mississippi ("City") and the Diamondhead Country Club and Property Owners Association, Inc. ("DPOA"), effective as of the date of latest execution shown below, and shall remain in effect until canceled by one of the parties as provided below.

WHEREAS, DPOA desires to make certain improvements to the aesthetic beauty of The City of Diamondhead, specifically to the property defined herein as the "Adopted Right-of Way"; and

WHEREAS, DPOA agrees to assume all responsibility for the safety of its employees and volunteers working in the Adopted Right-of-Way, and further agrees to save the City harmless on any and all claims arising from work performed under this Agreement; and

WHEREAS, the City is authorized to enter into such agreements by authority granted by the Mayor and City Council of the City of Diamondhead and is desirous of so doing.

NOW THEREFORE, for and in consideration of the stated premises and for the mutual covenants and agreements of the parties as herein contained, it is agreed as follows:

### **DEFINITION OF "ADOPTED RIGHT-OF-WAY":**

The "Adopted Right-of-Way" is defined as follows:

The non-paved surfaces of the Gex Drive right of way from the intersection of West Aloha Drive north to, but not including, Diamondhead Circle, as delineated on the surveys attached as Exhibits A-1 and A-2, and the non-paved surfaces of the Gex Drive South right of way and the unnamed "Asphalt Roadway" right of way, as delineated on the survey attached as Exhibit B, including the right of way and center of the traffic circle commonly known as "Yacht Club Circle." The Adopted Right-of-Way includes the areas designated on Exhibits A-1, A-2 and B as the "Gex Drive Landscape."

### **THE CITY SHALL:**

1. Grant unto the DPOA a non-exclusive right of ingress and egress upon the Adopted Right-of-Way between the shoulder lines and the right-of-way lines on both sides of the roadway, including the median area.
2. Retain the specific right to enter upon the Adopted Right-of-Way to maintain and perform work commensurate with good road maintenance practices.

3. Retain all maintenance rights, duties, and responsibilities within the Adopted Right-of-Way from shoulder line to shoulder line, including the roadway, shoulders, drainage, storm drains, signing, and striping.
4. Retain all rights and responsibilities for control of access, outdoor advertising, and other uses of the Adopted Right-of-Way other than those specifically granted to the DPOA.

DPOA SHALL:

1. Provide all funds necessary for the initial planting and continual maintenance, including mowing of all sod and litter control, on the Adopted Right-of-Way.
2. Provide all funds necessary for the initial planting and continual maintenance of shrubs and other types of flora on the Adopted Right-of-Way.
3. Provide equipment and labor necessary for mowing, edging, and trimming sod and perform same within the Adopted Right-of-Way, and provide for trimming of all bushes, trees, and shrubs. Said services will be provided in a manner and at such times so as not to create a hazardous condition or restrictions to the traveling public.
4. Purchase any and all fertilizer, seed, additional labor, or equipment necessary for proper maintenance within the limits specified.
5. Provide work area signage in accordance with current standards set out in the Manual on Uniform Traffic Control Devices for Streets and Highways.
6. Assume total responsibility for the safety and liability of its operations within the limits described, and shall hold the City harmless on any and all claims arising from work performed.
7. Submit to the City's designated agent for approval any plans to significantly change the general character or overall appearance of the landscaping along the Adopted Right-of-Way. Such approval shall not be required in relation to the planting of flowers, shrubs, bushes, trees, etc. where such planting does not significantly change the general character or overall appearance of the landscaping along the Adopted Right-of-Way.

IT IS FURTHER MUTUALLY AGREED AS FOLLOWS:

1. That no right or responsibility other than those specifically listed herein above are granted or implied, and that all rights not specifically conveyed herein are retained by the City.

2. That in the event the City finds that any bush, tree or shrub blocks or obscures the vision of motorists in the Adopted Right-of-Way or otherwise constitutes a traffic hazard or threat to public safety, it shall notify the DPOA's designated agent in writing of the modification necessary to correct the hazard or threat. If DPOA fails to correct the hazard or threat within 48 hours, the City shall have the right to take corrective action.
3. That the City reserves the right to make the necessary improvements or modifications within the designated limits of this Agreement at any time it deems necessary to upgrade this facility to meet transportation demands, without payment or other compensation for removal or destruction of the shrubbery or other improvements made by the DPOA under this agreement.
4. That the City executes its orders and directives through the Ordinances of The City of Diamondhead. All notices and correspondence with the City shall be directed to the designated agent shown below. Similarly, the DPOA executes all of its orders and directives through its President or Board of Directors. All notices and correspondence with the DPOA shall be directed to the agent shown below. All notices and correspondence shall be considered delivered upon receipt at the locations or telephone numbers listed below. All modifications to this Agreement must be submitted in writing through the designated agents and signed by the parties before they can take effect. Oral agreements cannot serve to modify this Agreement.

The designated agents for the parties

CITY:

Mayor Charles H. Ingraham, Jr.  
City of Diamondhead  
5300 Diamondhead Circle  
Diamondhead, MS 39525  
Telephone: (228) 222-4626

DPOA:

Marshall Kyger, President  
Diamondhead Country Club and Property Owners Association, Inc.  
5300 Diamondhead Circle  
Diamondhead, MS 39525  
Telephone: (228) 255-1900

5. That this Agreement may be canceled by either party upon notification to the other party ninety (90) days prior to the date of cancellation, except when in the opinion of the City an unsafe condition exists, in which situation, this Agreement may be terminated without prior notice.

Authorized by the Mayor and City Council of the City of Diamondhead, Mississippi, on the 7th day of Jan, 2013, Minute Book \_\_\_\_\_, Page \_\_\_\_\_ and executed this 7th day of January, 2013.

Charlotte H. H. H.  
Mayor

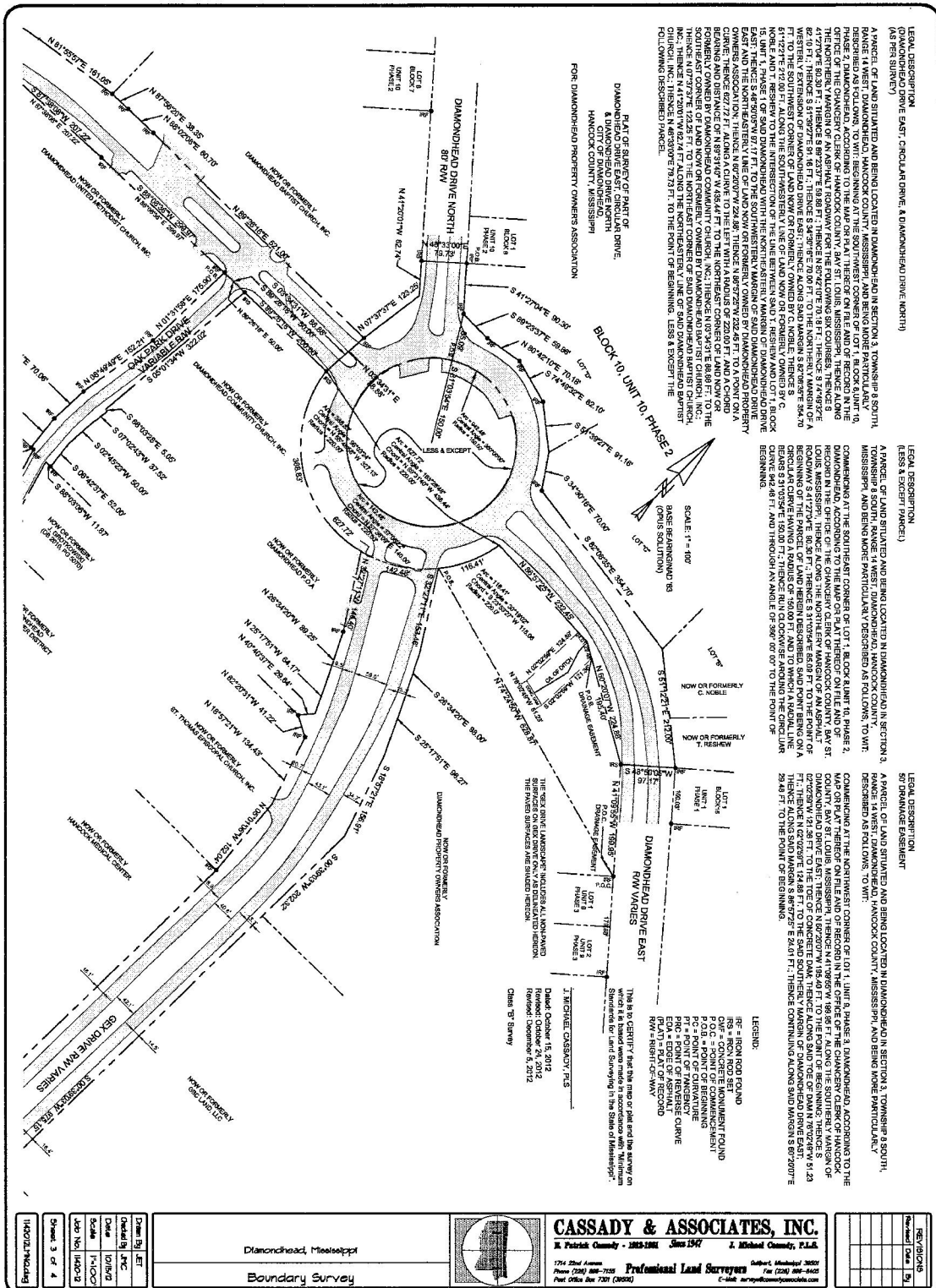
Authorized by the Board of Directors of the Diamondhead Country Club and Property Owners Association, Diamondhead, Mississippi, on the 7th day of January, 2013, executed this 7th day of January, 2013.

E. Marshall Ky  
President

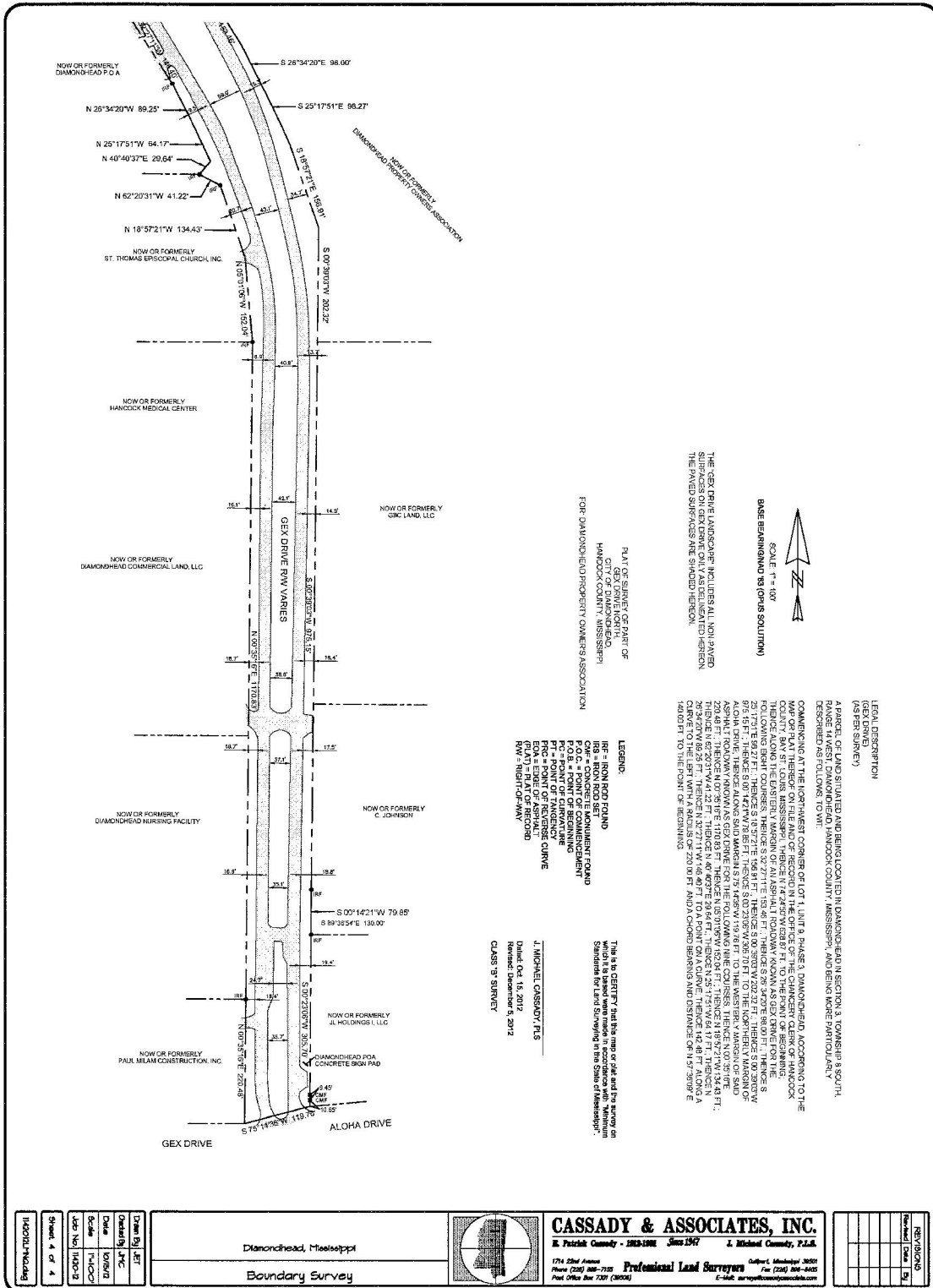
ATTEST:

Dina M. Foster  
City Clerk  
The City of Diamondhead, Mississippi

## Exhibit A-1

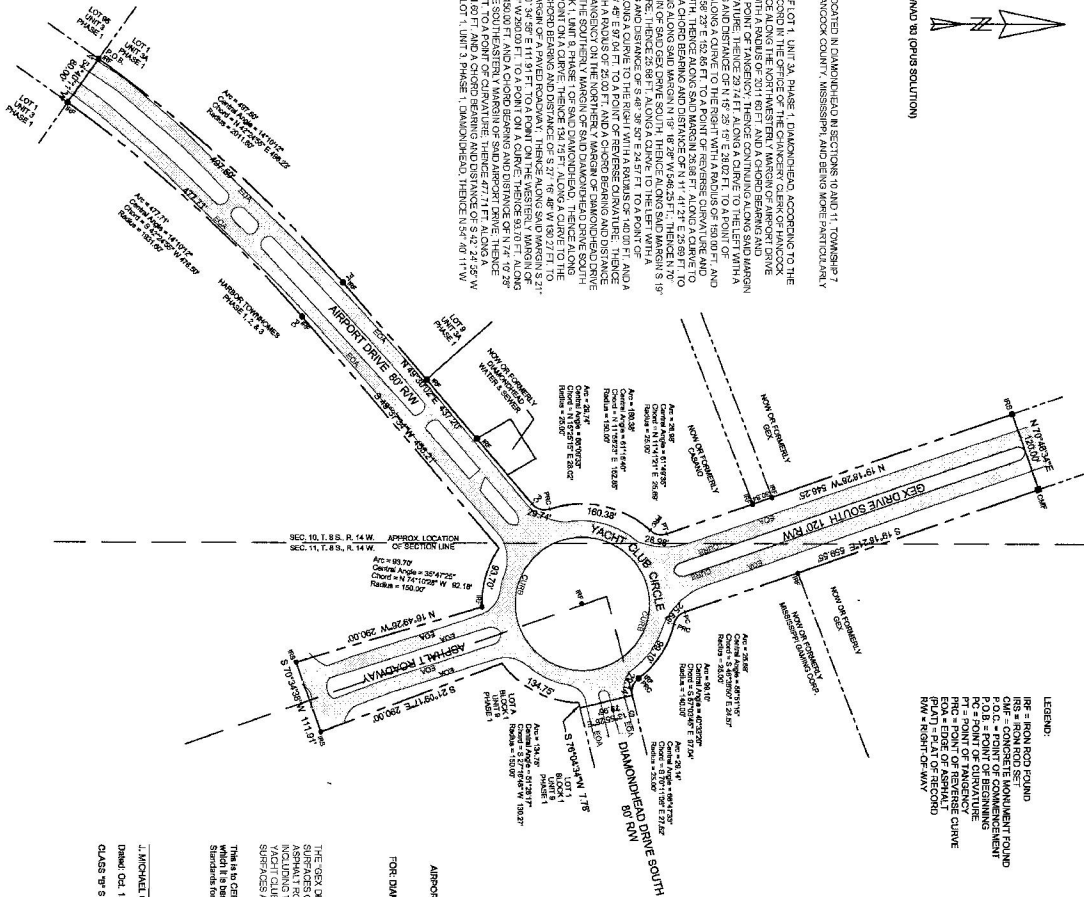
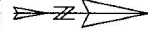


## Exhibit A-2



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BASE BEARING AND JOINT SOLUTION)



LEGEND:

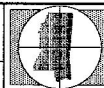
IRF = IRON ROD FOUND  
IRS = IRON ROD SET  
CMF = CONCRETE MONUMENT FOUND  
P.O.B. = POINT OF BEGINNING  
P.O.C. = POINT OF CURVATURE  
PT = POINT OF TANGENCY  
PRC = POINT OF REVERSE CURVE  
EOA = EDGE OF ASPHALT  
(PLAT) = PLAT OF RECORD  
RW = RIGHT-OF-WAY

J. MICHAEL CASSADY, P.L.S.  
Dated: Oct. 15, 2012  
CLASS "B" SURVEY

THE 'X' ON DRIVE LANDSCAPE, NO. LOTS ALL, NON-PAVED SURFACES ON GEX DRIVE SOUTH AND THE UNPAVED ASPHALT ROADWAY SOUTH OF YACHT CLUB CIRCLE, INCLUDING THE NON-PAVED SURFACES IN AND AROUND YACHT CLUB CIRCLE, AS DEFINED HEREON, THE PAVED SURFACES ARE SHOWN HEREON.

PLAT OF SURVEY OF PART OF  
GEX DRIVE SOUTH,  
DIAMONDHEAD DRIVE SOUTH,  
AIRPORT DRIVE, AND AN UNNAMED PAVE ROADWAY,  
CITY OF DIAMONDHEAD,  
HANDCOCK COUNTY, MISSISSIPPI

Diamondhead, Mississippi  
Boundary Survey



**CASSADY & ASSOCIATES, INC.**  
 H. Patrick Cassidy - 1923-1982 Since 1947 J. Michael Cassidy, P.L.S.  
 1714 22nd Avenue Gulfport, Mississippi 39204  
 Phone (228) 894-7153 Fax (228) 894-8425  
 Post Office Box 7301 (39505) E-Mail: [survey@cassadyandassociates.com](mailto:survey@cassadyandassociates.com)  
**Professional Land Surveyors**

REVISIONS		
Revised	Date	By